

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|--------------------------|---|----------------|
| UNITED STATES OF AMERICA |) | |
| |) | |
| v. |) | 02: 09-cr-0264 |
| |) | |
| RICHARD HEITZENRATER and |) | |
| ROBERT KUZMA |) | |

MEMORANDUM AND ORDER OF COURT

Presently before the Court for disposition is the OMNIBUS PRETRIAL MOTIONS WITH REGARD TO SUPERSEDING INDICTMENT filed by Defendant Richard Heitzenrater (Document No. 55) and the RESPONSE IN OPPOSITION filed by the Government (Document No. 57).

On August 26, 2009, a Federal Grand Jury in the Western District of Pennsylvania returned a four-count Indictment against Defendants Richard Heitzenrater and Robert Kuzma. Count One of the Indictment charges both Defendants with Conspiracy to Obstruct Official Proceeding in violation of Title 18, United States Code, § 1512(k); Count Two of the Indictment charges both Defendants with Obstruction of Official Proceedings in violation of Title 18, United States Code, § 1512(c); Count Three charges only Defendant Heitzenrater with deprivation of civil rights under color of law, in violation of Title 18, United States Code, § 242; and Count Four charges only Defendant Kuzma with accessory after the fact, in violation of Title 18, United States Code, § 3.

Defendant Heitzenrater filed an Omnibus Pretrial Motions (Document No. 28), which was granted in part and denied in part by Order filed February 1, 2010. On February 3, 2010, Defendant Heitzenrater filed a motion to reconsider in which he requested the Court to reconsider its decision on two motions - the motion for severance (Document 28-6) and the

Motion for Discovery (Document No. 28-7). The Motion for Reconsideration was denied by the Court by Memorandum and Order of March 9, 2010 (Document No. 56).

On February 11, 2010, a Federal Grand Jury in the Western District of Pennsylvania returned a four-count Superseding Indictment against Defendants Richard Heitzenrater and Robert Kuzma. The only difference between the original Indictment and the Superseding Indictment is that the charge against both Defendants contained in Count Two has been changed from an alleged violation of Title 18, United States Code, § 1512(c), to an alleged violation of Title 18, United States Code, § 1519.

On March 4, 2010, Defendant Heitzenrater filed the instant motion in which he renews his original pretrial motions and adds one additional motion: Motion for Disclosure of Exculpatory and Impeachment Information Under the United States Court Decision in Brady vs. Maryland (Document No. 55).

For the reasons explained in both the original Order of Court in which Defendant's Omnibus Pretrial Motions were granted in part and denied in part, as well as the Order denying the Motion for Reconsideration, the renewed pretrial motions are **DENIED**.

Defendant's new Motion for Disclosure of Exculpatory and Impeachment Information Under the United States Court Decision in Brady vs. Maryland is likewise **DENIED**. In the instant motion, Defendant asserts a serious allegation, albeit cryptically, that he has "learned that a material government witness . . . , who is a police officer, was summoned before Federal Drug Enforcement Administration representatives, involved in a task force, for questioning in January, 2010" and that the "questioning involved this material witness' disclosure of information to the target of a drug investigation that thwarted a search warrant

being conducted by a federal drug task force against a target in the Beaver County area.” Mot. at 3-4.

The government responds that, after conferring with defense counsel and obtaining additional information from him, it conferred, *inter alia*, directly with the group supervisors at the federal Drug Enforcement Administration, as well as several task force agents, and cannot corroborate the allegations made by Defendant in his motion.

Accordingly, based on the government’s representations, the Motion for Disclosure of Exculpatory and Impeachment Information is **DENIED**.

A Pretrial Conference is scheduled in this case on **Friday, March 26, 2010 at 11:00 A.M.** in Courtroom No. 6C, 6th Floor, United States Post Office & Courthouse, Pittsburgh, PA.

So **ORDERED** this 22nd day of March, 2010.

BY THE COURT:

s/Terrence F. McVerry
United States District Court Judge

cc: Soo C. Song,
Assistant U.S. Attorney
Email: soo.song@usdoj.gov

James J. Ross, Esquire
Bowers, Ross & Fawcett
Email: jross@brf-law.com

Mark D. Lancaster, Esquire
Email: mdlcrimlaw@gmail.com